Kelly-Springfield Tire Company *and* Local No. 26, United Rubber, Cork, Linoleum and Plastic Workers of America. Case 5-CA-12107

March 30, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On November 30, 1981, Administrative Law Judge Thomas E. Bracken issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed answering briefs and motions to strike.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified below.[1]

1. In January 1980 Respondent informed the Union, which has represented Respondent's employees for more than 40 years, that it had certain volumes containing information about chemical materials used in the plant, including a listing of chemicals and sheets setting forth precautions concerning the handling of chemical substances in the plant. Shortly thereafter the Union requested the list of chemicals and copies of the handling precaution sheets. Respondent refused to furnish the Union the information requested.

We agree with the Administrative Law Judge that the information, which relates to the health and safety of employees and to implementation of provisions of the bargaining contract, is relevant to the Union's function as bargaining representative. We also agree with his rejection of Respondent's defenses based upon in-plant access it afforded individual employees to the information, upon Respondent's supplying the Union the information later, in November 1980, and upon the availability of information through other proceedings. We disagree, however, with his rejection of Respondent's defense based upon its alleged proprietary interest in the material requested and the need to keep them secret from competitors. We think Respondent has asserted a legitimate defense, which on its face could possibly privilege nondisclosure of the information or require only conditional disclosure.[2] Therefore, in view of Respondent's contention that disclosure of the requested information might compromise its proprietary interests, we shall modify the Administrative Law Judge's findings and recommended order.

The possibility that some of the information that the Union requested may be subject to a proprietary defense does not excuse Respondent from furnishing information as to which no adequate defense is raised.[3] Accordingly, we conclude that Respondent violated Section 8(a)(5) and (1) of the Act by failing to supply the Union with the list of chemicals and the handling precaution sheets requested to the extent the information does not constitute proprietary secrets.

2. In November 1980, some 8 months after the Union had requested the information, Respondent supplied the Union with the list of chemicals used in the plant and copies of the handling precaution sheets. The Administrative Law Judge recommended, as remedy for the 8(a)(5) violation based upon Respondent's earlier refusal to furnish the information, that Respondent be required further to identify the materials on the list of chemicals and on the sheets,[4] and to cross-reference the names on the list of chemicals to the substances covered by the handling sheets. We adopt this recommended remedy although the 8(a)(5) violation found is not based upon Respondent's failure to furnish these identifying materials.[5] As the Administrative Law Judge pointed out, some names on the list of chemicals were descriptive words from which the actual chemical could not be determined; the names on the handling sheets were code names for the substances described by the sheets and may not reveal

[1] We grant the motions of the General Counsel and the Charging Party to strike an affidavit attached to Respondent's brief in support of exceptions. The evidence presented in the affidavit was available at the time of the hearing in this case.

We deny the Charging Party's request that we impose costs and attorney's fees upon Respondent, as we do not consider Respondent's defenses patently frivolous. See *Heck's Inc.*, 215 NLRB 765 (1974).

[2] See *Plough, Inc.*, 262 NLRB 1095 (1982); *Minnesota Mining & Mfg.*, 261 NLRB 27 (1982).

Member Hunter agrees with the result here for the reasons stated in his concurrence in *Minnesota Mining & Mfg.*

[3] Respondent contended that the material, in general, is proprietary and did not specify the particular items it considered proprietary.

[4] The Administrative Law Judge recommended that Respondent furnish the Union with the generic names of all chemicals on the list that were described by an expert witness (Dr. Wagoner) as insufficiently identified, and the generic names of substances referred to on handling sheets by code names.

[5] The Union did not specifically refer to these matters when it requested the list and the handling sheets by letter dated March 3, 1980, but the letter made clear that the Union requested the material "so that we may know what hazards we are exposed to in the plant, the degree of hazard, the exposure effects, and what we can do to help protect our own health and life." Respondent had previously indicated the futility of requesting a cross-reference in its letter of January 10, 1980, when it stated: "The chemicals are *not* cross-referenced to the code names shown on the handling sheets and there is no intention of giving this information even if known. This is considered proprietary."

the chemicals in the substances; and cross-referencing is a necessary link between the chemicals listed and the substances covered by the handling sheets. Without the generic names of the chemicals used in the plant and without cross-referencing, or some further description of the substances covered by the handling sheets, the Union cannot identify the specific chemicals to which employees are exposed in the workplace or determine the hazards involved in handling particular substances and the protection needed by employees. Consequently, we consider the Administrative Law Judge's recommended Order to be an appropriate remedy for the violation found since the Order simply requires Respondent to furnish the information requested with the decoding and identification necessary for the Union to understand it and to make practical use of it in the bargaining process.[6]

Respondent contends, however, at least with respect to the cross-reference, that disclosure of the additional materials would substantially impinge on its proprietary interests. Therefore, with respect to that part of the material which Respondent contends is proprietary we shall follow the policy we adopted in recent cases.[7] We shall give the parties an opportunity to reach an agreement through collective bargaining concerning conditions under which the information may be furnished the Union with appropriate safeguards to Respondent's proprietary interests. If the parties are unable to reach an accommodation of their respective interests, they may be before the Board again, and if the issue of whether they have bargained in good faith is presented, we will determine the question on the totality of circumstances.[8] If necessary then, we shall undertake the task of balancing the Union's right to the relevant data with Respondent's expressed concerns over the proprietary nature of the materials. At this time we shall order Respondent to bargain in good faith about providing the materials it asserts are proprietary.

AMENDED CONCLUSIONS OF LAW

We adopt the Administrative Law Judge's Conclusions of Law, with the substitution of the following paragraph for Conclusion of Law 4:

"4. By refusing on or about March 3, 1980, and continuing to refuse until November 1980, to furnish the Union with a listing of all chemicals used in the plant and copies of the handling precaution sheets—except those chemicals and sheets which constitute proprietary trade secrets—Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified and set out in full below, and hereby orders that the Respondent, Kelly-Springfield Tire Company, Cumberland, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith with Local No. 26, United Rubber, Cork, Linoleum and Plastic Workers of America, as the exclusive bargaining representative of its employees found to be an appropriate unit, by refusing to furnish in a timely manner a listing of all chemical materials used in the plant and copies of the handling precaution sheets, except those materials and sheets which constitute proprietary trade secrets.

(b) In any like or related manner refusing to bargain collectively or interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) To the extent that the information does not constitute the Respondent's proprietary trade secrets, upon request:

(1) Furnish the Union with the generic name of each chemical set forth in the handling precaution sheets where only a code name is set forth.

(2) Furnish the Union with the generic names of all chemicals contained on the "Revised List of Chemicals" that were described by Dr. Wagoner as insufficiently identified or questionable.

(3) Furnish the Union with a cross-reference of names contained on the Revised List of Chemicals with code names set forth on the handling precaution sheets.

(b) To the extent that the information does constitute the Respondent's proprietary trade secrets, upon request bargain collectively in good faith with Local No. 26, United Rubber, Cork, Linoleum and Plastic Workers of America, concerning furnishing the Union with (1) the generic name of each chemical set forth in the handling precaution sheets where only a code name is set forth; (2) the generic names of all chemicals contained on the Revised List of Chemicals that were described by Dr. Wagoner as insufficiently identified or ques-

[6] We do not agree with the Administrative Law Judge that it would be appropriate to require Respondent to furnish the names of additional chemicals that were used in the plant before January 1980, as such a remedy in our view is not suitably related to the violation found.

[7] *Minnesota Mining & Mfg., supra; Borden Chemical*, 261 NLRB 64 (1982); *Colgate-Palmolive*, 261 NLRB 90 (1982).

[8] Substantiation of various positions asserted by the parties would be an important element of such an evaluation.

tionable; (3) a cross-reference of names contained on the Revised List of Chemicals with code names set forth on the handling precaution sheets; and thereafter comply with the terms of any agreement reached through such bargaining.

(c) Post at its plant in Cumberland, Maryland, copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain collectively with Local No. 26, United Rubber, Cork, Linoleum and Plastic Workers of America, by refusing to furnish it with a listing of all chemical materials used in the plant and copies of the handling precaution sheets, except those materials and sheets which constitute proprietary trade secrets.

WE WILL NOT in any like or related manner refuse to bargain collectively with the Union or interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL, upon request, furnish the Union the following information to the extent it does not constitute proprietary trade secrets: (1) the generic name of each chemical set forth in the handling precaution sheets where only a code name is set forth; (2) the generic names of all chemicals contained on the Revised List of Chemicals that were described by Dr. Wagoner as insufficiently identified or questionable; (3) a cross-reference of names contained on the Revised List of Chemicals with code names set forth on the handling precaution sheets.

WE WILL, upon request, bargain in good faith with the Union about furnishing the information listed above, to the extent it does constitute proprietary trade secrets, and comply with the terms of any agreement reached through bargaining.

KELLY-SPRINGFIELD TIRE COMPANY

DECISION

STATEMENT OF THE CASE

THOMAS E. BRACKEN, Administrative Law Judge: This case was heard at Cumberland, Maryland, on December 19, 1980,[1] and in Baltimore, Maryland, on January 23, 1981. The charge was filed by Local No. 26, United Rubber, Cork, Linoleum and Plastic Workers of America (hereafter the Union or Local 26), on April 14. On May 28, a complaint was issued, amended June 12, alleging a violation by Kelly-Springfield Tire Company (Respondent) of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended. The issue set forth in the complaint was whether Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with a listing of all chemical materials used in the plant and copies of handling precaution sheets.

Respondent's answer to the complaint was duly filed, and denies the commission of any unfair labor practices. Respondent further denied that the Union had requested the listing and the handling sheets in order to carry out properly its representation responsibilities under the collective-bargaining agreement, but alleged it was done to assist certain of its members in preparing for a personal injury suit.

During the course of the hearing, the testimony disclosed that Respondent had, subsequent to the filing of its answer, supplied the Union with a list of chemical names and with the handling precaution sheets that applied to chemicals used in the plant of Respondent in 1979 and 1980. The General Counsel and counsel for the Charging Party both contend that the listing of chemical materials and the handling precaution sheets so supplied do not contain generic chemical names which sufficiently identify the chemicals involved, and that Respondent, in order to bargain properly, must supply a generic name that identifies the chemical referred to. The Charging Party further argues that Respondent must furnish it with a list, not only of those chemicals currently in use, but also of all chemicals previously used in the plant.

[1] All dates are in 1980, unless otherwise indicated.

Upon the entire record,[2] including my observation of the demeanor of the witnesses, and after due consideration of the oral argument of the General Counsel, and the briefs filed by the Company and the Union, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Company, a Maryland corporation, manufactures automobile tires at its plant in Cumberland, Maryland, where, during the preceding 12 months, it purchased and received materials and supplies valued in excess of $50,000 from points located outside of the State. The Company admits, and I find, that it is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent and Local 26 have had collective-bargaining agreements extending over a period of 44 years.[3] The current collective-bargaining agreement (G.C. Exh. 10) is for the period of June 11, 1979, to June 8, 1982, and covers approximately 1,700 employees. Set forth therein is the following bargaining unit:

> The term "employees" for the purpose of this Agreement includes: hourly rated and piecework production, and maintenance employees at the Company's plant in Cumberland, Maryland, excluding those employees working in the capacity of office, clerical, supervisory employees, watchmen and guards, and all other supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

The bargaining agreement also contains several other provisions that are relevant to this case:

Article X

> Sec. 3. The Company shall continue to make reasonable provisions for the safety and health of its employees during their work hours by providing competent Plant Dispensary Personnel. The Company and the Union agree to cooperate in practicing and carrying out safety rules.

Article XI

Section 2: Safety Committee

> (a) A sub-committee of not more than three employees representing the Company and not more than three employees representing the Union will be appointed to serve as a Safety Committee to encourage the promotion of safe working practices and/or sanitary and healthy working conditions within the plant. A minimum of one Company representative and one Union representative will be chosen from the regular members of the Labor-Management Committee.
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> (b) The Safety Committee will meet as often as deemed necessary, but not less than once a month for the purpose of discussing safety problems and will tour the plant periodically to observe the progress of its recommendations. Members of the Safety Committee may, with the approval of their immediate Supervisor, leave their job when requested for the purpose of investigating a safety problem provided it will not interfere with production. The Company will provide distinguishing insignia for all members of the Safety Committee to wear on plant tours.

The Company and the Union are also parties to a "Pension, Insurance, and Service Award Agreement." This agreement was originally entered into in 1950, and the current version thereof is for the period of July 16, 1979, until June 8, 1982. (G.C. Exh. 9.) This Agreement provides for four different type pensions, with one of them being a "Disability Retirement Pension." This disability pension enables a permanently incapacitated employee to receive a pension under much less stringent eligibility rules than those required to receive the other type pensions.

B. *Sequence of Events*

The facts and the chronology in this case are essentially undisputed, so that the disposition of the case principally depends upon the resolution of questions of law.

In January 1979, company officials called a meeting of the safety committee, and informed its members of "all that was known about Tardax." Paul Heinrich, an employee of the Company for 22 years, and the chairman of its safety committee for 13 years, testified credibly that they were informed that Goodyear had tested a compound called Tardax, and the tests revealed it caused bladder cancer in rats. When the committee questioned the chief chemist as to long-term effects of Tardax on the employees, they were told that the only way that any of the employees could get cancer from it was to eat the compound. The Union thereafter contacted the Maryland Occupational Safety and Health Board (MOSHA), whose hygienists thereafter reviewed the plant. The record does not disclose that MOSHA required Respondent to take any action as to its safety and health practices.

On January 10, Respondent convened a meeting in its grievance room with the president of the Union, B. J.

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[2] Resp. Exh. 3 was not included in the exhibit files forwarded to me at the conclusion of the hearing. Respondent's counsel was so notified and requested to supply the exhibit if he wished it included in the record. No reply having been received from Respondent, Resp. Exh. 3 is rejected.

[3] Respondent is, and has been since 1946, a wholly owned subsidiary of Goodyear Tire and Rubber Company of Akron, Ohio. The record does not indicate, nor is there any claim, that Local 26 ever had any collective-bargaining agreement with Goodyear Tire and Rubber Company.

Carter, and several members of the safety committee. Personnel Manager R. F. Schoch proceeded to give copies of a 1-1/2-page letter to each person present.[4] (G.C. Exh. 2.) Schoch then read the letter, which was addressed to the president of the Union, aloud. The first four paragraphs read as follows:

> There are two volumes of "Handling Precaution" sheets in Junior Brelsford's office. Each sheet covers a chemical code used in production.
>
> The information in these volumes are available to be seen upon request to any employee in this plant. However, because of its proprietary nature duplication or making copies will not be permitted. If an employee wishes to personally make notes, he or she may do so.
>
> These volumes will be available only in Mr. Brelsford's office when either he or the Industrial Hygienist technician, John Mace, or the Safety Manager, Pat Harness, are available. The hours will be from 7:30 a.m. to 4:00 p.m.
>
> Each employee will be requested to read the introduction page so that he understands the intentions of the volumes.

The letter then went on to describe some of the information that would be found in these "handling sheets,"[5] such as "An assessment of the *Degree of Hazards* and *Exposure Effects* involved in the handling of each specific material," and "Recommendations on precautionary handling measures and protective equipment." The letter concluded by stating that any employe who wanted to view these books would do so on his own time.

On February 11 Safety Committeeman Joseph Taylor, pursuant to the instruction of Safety Committee Chairman Heinrich, telephoned Brelsford and asked permission to copy the material handling sheets. Brelsford refused to do so. By letter dated February 18, Personnel Manager Schoch wrote to the union president, in reference to the Union's request to have its safety committee members copy the chemical code information in the handling sheets. The Company refused the Union's request, and again offered to let individual employees read sheets that pertained to the chemicals that employees worked with or around. (G.C. Exh. 3.)

Around this same time, Heinrich went to Brelsford's office to look at the Tardax handling sheet. Heinrich was particularly interested in Tardax, as he recalled that in the fifties, when he was an operator, Tardax would be kept in open drums. Then, in recent time, the employee who works with Tardax wears goggles, a mask, and a disposable uniform. When the employee finishes weighing the Tardax he needs, he has to take a shower, put the uniform in a plastic bag, and discard it, before he can return to work. Brelsford allowed Heinrich to review the Tardax handling precaution sheet, but refused to allow him to copy it.

By a lengthy letter dated March 3, the Union, by Heinrich, wrote to Respondent advising that it had been trying to obtain from the Company information "about the hazardous chemicals our members work with at the plant." The Union then requested that it receive "an entire copy of the handling precaution sheets, including the section listing all of the chemical materials used in the plant." The Union concluded its letter by calling upon the Respondent:

> . . . to release all of this information to us that we may know what hazards we are exposed to in the plant, the degree of hazard, the exposure effects, and what we can do to help protect our own health and life.

The Company denied the Union's request by letter dated March 6, and restated its position that it would allow "affected employees" to view the books containing the chemical handling sheets, and take "personal notes."

On March 13, the Company placed on its bulletin boards, a "NOTICE TO ALL EMPLOYEES" who worked in the millroom, receiving, stores, cement house, and physical test lab, advising that "handling precaution sheets for each chemical used in this plant are available for your viewing in Junior Brelsford's office." These sheets had to be read on the employees' own time, and while the employee could take personal notes, the sheets could not be copied in their entirety, nor would copies be made for any employee. (G.C. Exh. 8.)

On April 14 the Union, by Heinrich as chairman of the safety committee, filed a charge with the Board against Respondent, alleging that since January 10 the Company had refused to furnish it with "copies of Chemical Handling Sheets," "and a complete list of chemicals to which workers are exposed by chemical families and formula rather than just by a code name or number." On May 28, the Board issued the complaint herein, with the key paragraph thereof reading as follows:

> 6. On various occasions since January 1980, and by letter dated March 3, 1980, the Union, in order that it properly carry out its representation responsibilities under the collective-bargaining agreement, has requested that Respondent furnish it with a listing of all chemical materials used in the plant and a copy of the handling precaution sheets.

As previously set forth in the answer filed by Respondent on August 14 to the complaint, Respondent admitted that the Union had requested listings of chemical materials and handling precaution sheets, but denied that it had made those requests in order to properly carry out its representation responsibilities but had done so "in order to assist certain of its members and their counsel in preparing for a personal injury suit." Respondent further averred that the information sought had, since January 1980, "been available to the Union and all of its members [and] is now available to counsel of record for this proceeding through discovery procedures in a lawsuit now pending in Federal District Court in Baltimore, and is

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[4] Safety Committee Chairman Heinrich was unable to be present, but he subsequently received his copy of the letter.

[5] The actual sheets, G.C. Exhs. 6, 7, and 12, were captioned "Handling Precautions." Witnesses, and letters received into evidence referred to these as chemical handling sheets, material handling sheets, and handling sheets.

the subject of an OSHA regulation which becomes effective in the near future."

The record discloses that on July 29, 26 personal injury suits were filed in the United States District Court for the District of Maryland by present employees or personal representatives of former employees against the Goodyear Tire and Rubber Company, alleging negligent exposure to chemicals during the course of their employment at Respondent's Cumberland plant. The plaintifs in the lead case are Paul F. Heinrich and his wife,[6] and they were asking for $110 million in damages. The remaining cases also sought substantial damages. While Kelly-Springfield was not named as a defendant in the district court case, it was constantly referred to in the pleadings as the employer of Heinrich and the other plaintiffs. The suits were filed by the same law firm which represents the Union in the instant proceeding. The same law firm represents Kelly-Springfield in the district court case as represents it in this Board proceeding.

Also, on October 7, a complaint was filed with the Occupational Safety and Health Administration (OSHA) on behalf of 19 present or former employees of Kelly-Springfield against that Employer, alleging that the Employer had failed to furnish these employees with exposure and medical records. This OSHA complaint was filed by the same law firm that represents the Union in this Board proceeding.

C. *Documents Furnished by Respondent*

After the filing of the OSHA complaint, numerous letters were exchanged in October, November, and December between Respondent's counsel and counsel for the Union concerning chemical records. However, the subject matter of these letters was not restricted to issues arising out of the Board's complaint, but was intermixed with discovery matters pertaining to the district court case, and the OSHA case, just as if there was one legal matter between the parties.

On November 4, the Union did receive from Respondent's counsel a 6-page list captioned "Revised List of Chemical Names" and a large packet of handling precaution sheets. (G.C. Exh. 11 and 12.) After Heinrich and other employees reviewed the sheets, they determined that handling sheets for 12 chemicals were not included, and the Union, then by letter dated November 11 requested copies of the sheets. On November 25, Respondent supplied these additional handling sheets. On December 8, Respondent forwarded 61 more chemical handling sheets to the Union advising that they were for chemicals no longer in use in the plant, but had been in use from time-to-time from 1972 and possibly earlier.

D. *Analysis and Conclusion*

The basic law applicable to the facts of this case was stated by Administrative Law Judge Robert E. Mullin in *Minnesota Mining & Mfg.*, 261 NLRB 27 (1982):[7]

> It has long been settled that the employees' exclusive bargaining agent is entitled to such information from the employer as is relevant and necessary to the fulfillment of its obligation to fairly and properly represent the employees in the bargaining unit. *N.L.R.B.* v. *Truitt Manufacturing Co.*, 351 U.S. 149 (1956); *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432 (1967). Moreover, the union's right to such information extends not only to the period when it is negotiating a contract, but also during the life of the agreement for the purpose of administering or effectuating its terms, as well as preparing for future or prospective negotiations. *The A.S. Abell Company*, 230 NLRB 1112 (1977); *Western Massachusetts Electric Company*, 234 NLRB 118 (1978).
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> Information that bears directly on the negotiation or administration of a bargaining agreement is presumptively relevant. The standard for ascertaining the need for such information is a showing of "probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *N.L.R.B.* v. *Acme Industrial Co., supra; General Electric Company*, 199 NLRB 286, 288–289 (1972); *Brooklyn Union Gas Company*, 220 NLRB 189, 191–192 (1975); *Globe Stores Inc., et al.*, 227 NLRB 1251, 1254 (1977); *Temple-Eastex, Incorporated; etc.*, 228 NLRB 203, 204 (1977). In effect the employer's responsibilities in this regard are predicated on the union's need for such information in the fulfillment of its obligations to the employees in the unit. [261 NLRB at 37, 38.]

Respondent in its brief recognizes these legal principles and cites in support of its position many of the same cases that were cited by the General Counsel in his oral argument, and by the Union in its brief. *NLRB v. Truitt Mfg.*, 351 U.S. 149 (1956); *NLRB v. Acme Industrial Co.*, 358 U.S. 432 (1967); *Detroit Edison v. NLRB*, 440 U.S. 301 (1979). Respondent also properly recognizes in its brief that the duty to supply information under Section 8(a)(1) turns upon "the circumstances of the particular case," and cites *Detroit Edison*, and *Truitt Mfg.*, just as the General Counsel and the Union cited them.

However, at this point, Respondent parts company with the other parties. Respondent does not contend that the handling precaution sheets and the list of chemicals are not relevant to the performance of the Union's duties; it simply contends that it has fulfilled its duty of furnishing information to the Union due to its supplying the handling sheets on November 4 and 25, and due to its supplying a listing of all chemicals being used in the plant on November 4.

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[6] Heinrich was the same chairman of the safety committee who has been previously referred to in this case.

[7] Administrative Law Judge Mullin, in the above-cited case, ordered that company to furnish the union with various items of health information that the union had requested, including the generic names of all chemicals and substances used or produced in the respondent's plant. *Colgate-Palmolive*, 261 NLRB 90 (1982), also involved a request by a union for various items of chemical information, and Administrative Law Judge Gerald A. Wacknov's Decision ordered the company to supply the requested information to the union. *Borden Chemical*, 261 NLRB 64 (1982), likewise involved the request of a union for information about chemicals used by that company. Administrative Law Judge Maurice M. Miller ordered the company to furnish the requested information to the union.

Both the General Counsel and the Union argue that the handling precaution sheets as furnished are inadequate in the information contained therein, as each sheet only identifies the chemical by a code name, and not by a generic chemical name that would be commonly known and understood by the Union and its representatives. The General Counsel further contends that because of this lack of information the Union does not know what chemicals the employees are working with, and therefore cannot bargain intelligently as to what hazards these chemicals constitute in the workplace. In like manner, the Union is unable to bargain about their effect on the employees, or about safety precautions that it would wish to institute, or about appropriate future medical, disability, and pension benefits.

The General Counsel and the Union also argue that the "Revised List of Chemical Names" does not set forth sufficient identification to allow the Union to know intelligently what the chemical is that an employee works with.

In support of this position, the Union had Dr. Joseph K. Wagoner, an admitted expert in the field of plant workers health and safety, testify. Dr. Wagoner testified that he had reviewed the Revised List of Chemical Names and found only a few names that could be identified by a generic term. He also found that some names were just general consumer names, such as fuel oil, and some were descriptive words from which the actual chemical could not be determined. Dr. Wagoner did subsequently review this list of chemicals, and set forth in General Counsel Exhibit 11A that 144 chemicals were sufficiently identified, 73 were not, and 8 were questionable. I credit Dr. Wagoner's uncontradicted testimony.

Respondent set forth in its brief that on January 16, 1981, it filed a consolidated response in the district court. This response was an affidavit of its employee Terry Phillips[8] which identified by chemical name, all of the chemicals described by Dr. Wagoner as being insufficiently described, and further supplemented generic names on Respondent's previous listing. It is Respondent's position that the issue of sufficiency of identification has been "substantially neutralized, if not cured, by the information provided to counsel for the Union in the affidavit of Mr. Terry Phillips." Respondent also argues in its brief it does not have to supply a cross-reference of the generic names of the chemicals contained in the Revised List of Chemical Names, as the issue was not set out in the complaint, and only arose on December 19, the first day of the hearing.

The circumstances of this particular case call strongly for a full and fair disclosure by the Employer of the information requested by the Union. From that day in January 1979, when the Company disclosed to the safety committee that a compound, long used in the shop, Tardax, caused cancer in rats, the Union's safety committee became attentive to the matter of what chemicals its members were using in the plant, and if they were being used safely, by proceeding to explore the matter with MOSHA. Then, when they received Respondent's letter of January 10, informing them of the existence of the two volumes of handling precautions, with its limited right to examine these sheets, clearly the Union had a further right to be concerned about the safety and health of its members. Later, when Taylor and Heinrich examined the Tardax handling precaution sheet in February, they had to be impressed by its grim and terse cautions, some of which were, avoid breathing its dust and vapor, avoid skin contact, wash immediately if skin contact occurs, wear gloves, use chemical goggles and a respirator, do not wear work clothes from company premises. Since they were only allowed to examine about six sheets, the contents of several hundred other sheets were unknown to them, and clearly they had a statutory duty to request these handling sheets from the Company, and learn what hazards or dangers that these chemicals represented to their members. The spectre of cancer has few equals in casting fear into the minds of American workers, and certainly the Union had not only the right, but the duty to seek out all chemicals that could be potential dangers to the health and well being of its members. By learning what potential risks and hazards the employees faced in the plant, the Union would then be in a position to bargain intelligently for protective measures to eliminate or reduce such hazards. In like manner, the Union could bargain for better medical facilities in the plant that would be geared to meet these hazards, for greater medical and surgical benefits, and for more relaxed eligibility rules for the securing of disability pensions.

Respondent's defense that it has not violated the Act because it subsequently furnished the Union with a listing of all chemical materials and a copy of the handling precaution sheets is without merit. Respondent took 8 months before it complied in the main with the Union's request for information. Such a delay evinces a failure to bargain in good faith within the meaning of Section 8(a)(5) of the Act. *Montgomery Ward*, 234 NLRB 588, 590 (1978) (3 months' delay); *Colonial Press*, 204 NLRB 852, 861 (1973) (2 months' delay). Accordingly, for the reasons stated herein, I find that Respondent unlawfully failed and refused to bargain with the Union in good faith in February and March 1980, when it refused the Union's requests for a listing of all chemical materials used in the plant, and copies of the handling precaution sheets.

I turn now to the General Counsel's and the Union's position that the handling precaution sheets are inadequate as they only identify the chemical by a code name, known only to Respondent. The code name is as meaningless to the Union as if it were in sanskrit. For the Union to be able to intelligently know and evaluate what chemical is being referred to, it is obvious that the Company must decode the name so that it will be meaningful.

As for the list of chemical materials, Respondent does not contest Dr. Wagoner's testimony which found that 73 of the listed chemicals were not sufficiently identified, and 8 were questionable. Rather, Respondent maintains that it has provided counsel for the Union with a copy of an affidavit it filed in the district court case, which supplies the generic name for those chemicals stated by Dr. Wagoner as being insufficiently identified. I do not find that Respondent has met its burden to bargain in

[8] Heinrich identified Phillips as Respondent's chief chemist.

good faith by such a side-door presentation. The Union is the exclusive bargaining representative of the employees, and it is entitled to receive relevant and necessary information from the Employer on its own merits and not as an ancillary to other proceedings in other forums.

As to the General Counsel's and the Union's request that the Company be required to cross-reference the names contained on the Revised List of Chemical Names with the code names contained on the handling precaution sheets, Respondent correctly argues that the issue was not included in the complaint. However, this does not preclude such a remedy from being contained in this Decision. As stated by the Supreme Court in *Carpenters, Local 60 v. NLRB*, 365 U.S. 651, 655 (1961), the Board "has broad discretion to adopt its remedies to the needs of particular situations" in order to effectuate the policies of the Act. I find that the needs of this situation require that Respondent supply such a cross-reference to the Union. As stated in *Minnesota Mining & Mfg., supra*, "on issues as vital to the employees as their health and safety, the bargaining agent is entitled to the fullest possible range of information so that it will be able to discuss and negotiate on these matters, in a meaningful fashion, on behalf of those whom it represents."

There is one point where the General Counsel and the Charging Party diverge, and that is on the matter of what period of time must Respondent supply the Union with a list of chemicals. Counsel for the General Counsel stated on the record that he sought the list of the chemicals in existence in 1980 when the Union made its written demand. Counsel for Respondent, agreeing on this point with the General Counsel, argues that the complaint does not specify the period of time, but infers, as did the Union's letter of March 3, that it was seeking a list of chemicals used in the plant at that time.

The Union, on the other hand, seeks the names of all chemicals currently and formerly used in the plant, back to its commencement of manufacturing tires. In support of its position, the Union points to Dr. Wagoner's testimony, who testified about chemicals previously used at a plant, stating "as important as—is knowledge of the current chemicals that a worker is exposed to in his work environment, equally and more important are the chemicals that he has been exposed to in the past." He explained that cancer and other chronic diseases have long latency periods, and, therefore, information concerning chemicals which may have exposed employees to dangers many years ago is important today so as to be able to deal with the employee's current medical problem.

It is clear that Respondent was not violating the Act when it did not furnish the Union with a list of the chemicals formerly used in the plant, as the Union has not requested this information from the Employer. However, in keeping with the tenets of *Carpenters, Local 60, supra*, I find that the needs of this situation require as part of the remedy, that Respondent supply the Union with a list of chemicals by their generic names that were used in the plant since it commenced making tires. The Union is not simply asking for past wage information, or other routine matters that are helpful in carrying out its duties to represent the employees in the bargaining unit, but is seeking information vital to the present and future health of the employees its represents. While the record does not disclose how many of the 1700 employees represented by the Union were employed prior to 1980, it is a reasonable inference to draw that a substantial number were so employed. The two witnesses who testified for the General Counsel, Heinrich and Taylor, had been employed since 1958 and 1967, respectively.

Respondent in its brief argues that it has a "significant and substantial interest in the confidentiality" of the listing of chemicals being used in the plant and a copy of the handling precaution sheets which it previously provided the Union, as well as in any information that it is subsequently directed to provide in this Board case. Respondent further contends that if the listing of chemicals and copies of the handling precaution sheets, as well as any information which it would be subsequently ordered to provide the Union, should fall into the hands of a business competitor, Respondent's competitive position could be prejudiced as it has "a significant and substantial interest in the confidentiality of that information." Respondent then goes on to state:

> Therefore, minimal protective use restrictions limiting the Union's ability to use the generic names of the chemicals to the performance of the Union's legitimate duties as a bargaining representative are warranted under the facts and circumstances of this case.

Detroit Edison, supra, establishes that an employer who wishes certain data to remain secret must demonstrate a reasonable basis for its concern over keeping the data secret. Respondent produced no witnesses or evidence to sustain its bare assertion, and therefore has not met its burden. The Union has been the collective-bargaining representative of Respondent's employees for 44 years, and there is nothing in the record to indicate that the Union does not want to remain the collective-bargaining agent for the next 44 years. The Union's duty of fair representation runs to the 1700 employees in the bargaining unit, not the 26 employees who are involved in personal injury suits against the parent company. Certainly, it is to the Union's best interest that it only use the generic names solely for pursuing its statutory representation responsibilities under the collective-bargaining agreement, and not to disseminate any information that would aid a competitor. No respectable union would wish to inflict a self-destructing wound on itself by supplying a competitor with confidential information. I can foresee no less responsible handling of sensitive data by union officials than by Respondent. *Ingalls Shipbuilding Corp.*, 143 NLRB 712, 718 (1963). Under these circumstances, the Union is directed to use the generic names of the chemicals solely in the performance of carrying out its duties as the bargaining representative of the plant's 1,700 employees.

As the final argument in its brief, Respondent contends:

> [t]he N.L.R.B. should defer its decision in this case until the identical issues involved herein are decided by the United States District Court for the District

of of Maryland in the discovery process being pursued against Respondent in the civil actions pending therein, or by O.S.H.A. in the proceeding pending against Respondent before it.

I do not find any merit in this contention of Respondent. The purpose of the National Labor Relations Act is for the vindication of the public interest, not private rights. The parties are not the same, as neither the Board nor the General Counsel are parties to the district court or OSHA cases. Also, the Union is not a party to these two proceedings, as both matters were instituted by private individuals. Again, the remedies are not the same in any of the three cases. In the district court case the individuals seek money damages for alleged personal injuries. In the OSHA case, the individuals seek their exposure and medical records. The Congress of the United States placed the primary authority of carrying out the provisions of the National Labor Relations Act on the Board and its processes. Since the earliest days of the Act, as in *S. L. Allen & Co.*, 1 NLRB 714 (1936), the Board has held that an employer has the statutory duty to provide relevant information requested by the collective-bargaining representative of its employees. The instant case clearly calls for a Board decision and remedy to fit the purposes of the Act, and there will be no deferral to the district court or to OSHA.[9]

CONCLUSIONS OF LAW

1. Kelly-Springfield Tire Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local No. 26, United Rubber, Cork, Linoleum and Plastic Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. All hourly rated and piecework production, and maintenance employees at the Company's plant in Cumberland, Maryland, excluding those employees working in the capacity of office, clerical, supervisory employees, watchmen and guards, and all other supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. By refusing on or about March 3, 1980, and continuing to refuse until November 1980, to furnish the Union with a listing of all chemical materials used in the plant and copies of the handling precaution sheets, Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

5. The unfair labor practice specified affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. It is recommended as to the handling precaution sheets that where any sheet only contains a code name Respondent shall furnish its generic name. It is further recommended that Respondent furnish the Union with the generic names of all chemicals contained on the Revised List of Chemicals, that were described by Dr. Wagoner as insufficiently identified or questionable. In addition, Respondent should be ordered to furnish a list that cross-references the names contained on the Revised List of Chemicals with the code names appearing on the handling precaution sheets. Also, Respondent should be ordered to furnish a list of the chemicals formerly used in the plant by such chemicals' generic names.

[Recommended Order omitted from publication.]

[9] See *Brown & Root*, 246 NLRB 33 (1979), in which the Board refused to defer to OSHA.